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9 Attorneys for Plaintiffs  
10 CITY OF HUNTINGTON BEACH, HUNTINGTON  
11 BEACH CITY COUNCIL, MAYOR TONY STRICKLAND  
12 and MAYOR PRO TEM GRACEY VAN DER MARK

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA

15 CITY OF HUNTINGTON BEACH, a  
16 California Charter City, and Municipal  
17 Corporation, the HUNTINGTON  
18 BEACH CITY COUNCIL, MAYOR OF  
19 HUNTINGTON BEACH, TONY  
20 STRICKLAND, and MAYOR PRO TEM  
21 OF HUNTINGTON BEACH, GRACEY  
22 VAN DER MARK

23 Plaintiffs,

24 v.

25 GAVIN NEWSOM, in his official  
26 capacity as Governor of the State of  
27 California, and individually; GUSTAVO  
28 VELASQUEZ in his official capacity as  
Director of the State of California  
Department of Housing and Community  
Development, and individually; STATE  
LEGISLATURE; STATE OF  
CALIFORNIA DEPARTMENT OF  
HOUSING AND COMMUNITY  
DEVELOPMENT; SOUTHERN

CASE NO. 8:23-CV-00421-FWD-ADSx

**JOINT RULE 26(f) REPORT**

Date: June 22, 2023

Time: 9:00 a.m.

Courtroom: 10D

1 CALIFORNIA ASSOCIATION OF  
 2 GOVERNMENTS; and DOES 1-50,  
 3 inclusive,  
 Defendants.

4 Pursuant to Federal Rule of Civil Procedure 26(f), CACD LR-26-1, and the  
 5 Order Setting Rule 26(f) Scheduling Conference (Dkt. No. 47), Plaintiffs City of  
 6 Huntington Beach *et al.* (“Plaintiffs”), Defendants Gavin Newsom, Gustavo  
 7 Velasquez, and the State of California Department of Housing and Community  
 8 Development (the “State Defendants”), and Defendant Southern California  
 9 Association of Governments (“SCAG”) (Plaintiffs, the State Defendants, and  
 10 SCAG, collectively, the “Parties”) submit this Joint Rule 26(f) Report for the  
 11 Court’s consideration for the Rule 26(f) Scheduling Conference set for June 22,  
 12 2023.

13 **A. Statement of the Case**

14 **Plaintiffs’ Statement:**

15 Plaintiffs’ lawsuit arises from violations of the U.S. Constitution, the  
 16 California Constitution, and State Statutes whereby the Governor, the Director,  
 17 HCD, SCAG, and other Defendants have unconstitutionally commandeered the  
 18 autonomy and Charter City authority of the City of Huntington Beach (“City”)  
 19 and are forcing the City Council to adopt findings contrary to the evidence and  
 20 City Council direction in direct violation of the First Amendment of the U.S.  
 21 Constitution.

22 According to the Governor and Director of HCD, State Housing and RHNA  
 23 Laws require the City Council to vote in a very certain, State-mandated, pre-  
 24 ordained way, to adopt a Housing Element with a State-mandate of 13,368 units of  
 25 high-density RHNA units. In doing so, the Governor and Director of HCD are  
 26 ordering the City Council to make certain findings, contrary to the evidence in  
 27 violation of the California Environmental Quality Act (CEQA). The Governor and  
 28 Director of HCD are requiring that the City Council make *very certain, State-*

1 *mandated, pre-ordained* findings (speech) that the creation of 13,368 RHNA units  
 2 of high-density housing by redeveloping already-developed areas of the City  
 3 outweighs the known substantial negative impacts to the City’s environment. In this  
 4 case, the “Project” that triggers CEQA is the City’s required amendment to its  
 5 Housing Element. As part of the CEQA process, it was determined that the Housing  
 6 Element amendment necessitated an Environmental Impact Report which impart  
 7 outlines and informs the public of the environmental impacts associated with the  
 8 Project. In this case, because some of the substantial impacts cannot be mitigated,  
 9 CEQA requires that the City Council adopt a “Statement of Overriding  
 10 Considerations” (“SOC”) before the Project (Housing Element update) can move  
 11 forward. The SOC must justify, as a matter of environmental impact, that the  
 12 benefits of the Project (the massive State-mandated increase in high-density housing  
 13 in the City) outweigh the negative environmental impacts. The City Council cannot  
 14 make these findings and are being sued by the State as a result of having not made  
 15 State compelled findings.

16 The RHNA Laws, which force cities to create high-density development,  
 17 *compel* the City Council to arrive at a “fixed” conclusion in favor of high-density  
 18 housing in the City regardless of the City Council’s consideration, through public  
 19 hearings, of a SOC. Moreover, the State’s recent Housing and RHNA Laws  
 20 impede on City’s independent legislative authority and claim to prevent judicial  
 21 review<sup>1</sup> of the HCD administrative rulings, which violates constitutional  
 22 principles of Separation of Powers and Procedural and Substantive Due Process  
 23 afforded by the U.S. Constitution and the California Constitution.

24 Finally, in 2022, the State’s Independent Auditor determined that the  
 25 State’s/HCD’s 2021 calculations created using flawed RHNA Laws, were  
 26 erroneous, concluding in part: “HCD could not demonstrate that it adequately  
 27

28 <sup>1</sup> The State Legislature amended the RHNA process to *eliminate judicial review*  
 when it amended Section 65584(c)(4) in 2004.

1 considered all of the factors that state law requires”<sup>2</sup>

2 In sum, the RHNA Laws are unconstitutionally vague and ambiguous (at  
3 best) and create a flawed process that mandates that the City of Huntington Beach  
4 zone for of 13,368 RHNA Units. The RHNA Laws violate the U.S. Constitution, the  
5 California Constitution, and Federal and State law.

6 **State Defendants’ Statement:**

7 The disagreement between State Defendants and Plaintiffs involve purely  
8 legal issues. The State Defendants contend that Plaintiffs lack standing to pursue  
9 these claims as a matter of law. “A municipal corporation, created by a state for the  
10 better ordering of government, has no privileges or immunities under the Federal  
11 Constitution which it may invoke in opposition to the will of its creator.” *Williams v.*  
12 *Mayor & City Council of Baltimore*, 289 U.S. 36, 40 (1933). Likewise, State  
13 Defendants believe that this Court should invoke *Younger* abstention to avoid  
14 interfering with an ongoing enforcement action against Plaintiff City of Huntington  
15 Beach for violating state housing law. State Defendants further assert that the  
16 Eleventh Amendment bars Plaintiffs from litigating state law claims in federal court.  
17 That state law precludes Plaintiffs from challenging their regional housing needs  
18 assessment also necessarily means that they have no fraud claim under state law.  
19 Finally, even assuming Plaintiffs had enforceable federal constitutional rights  
20 against the State Defendants (which they do not), State Defendants contend that the  
21 state laws and actions to which Plaintiffs object do not violate those rights at all.

22 **SCAG’s Statement:**

23 This action concerns Plaintiffs’ meritless constitutional and state law  
24 challenges to statewide legislation commonly known as the Regional Housing  
25 Needs Allocation, codified at Government Code section 65585 et seq. (“RHNA  
26

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27 <sup>2</sup> Online: California City News, “*Auditor Rips Housing Department Over Flawed*  
28 *RHNA Process*,” April 2022, <https://www.californiacitynews.org/2022/04/state-auditor-rips-housing-department-over-flawed-rhna-process.html>

1 Laws”). The RHNA Laws were expressly adopted to require the accommodation of,  
2 and ultimately foster development of, fair share housing throughout California.  
3 Plaintiffs name as defendants both the State Defendants, which are charged with  
4 setting the fair share number of housing units (known as the “regional  
5 determination”) and administering enforcement of a timely and compliant housing  
6 element, and SCAG, the government entity statutorily charged with allocating the  
7 regional determination of housing units among SCAG’s 197 constituent  
8 jurisdictions located throughout the counties of Ventura, Los Angeles, Riverside,  
9 San Bernardino, Orange and Imperial. The RHNA Laws in question require all  
10 cities and counties in California to review and update the housing elements  
11 contained in their respective general plans during a periodic cycle in order to  
12 accommodate and comply with the RHNA housing units they are assigned. In 2021,  
13 the City of Huntington Beach was allocated RHNA Units pursuant to this process  
14 and was required to update its housing element by late October 2021. Plaintiffs  
15 failed to do so and instead brought suit two years later – which was the day after  
16 Plaintiffs were sued by the California Attorney General in the Superior Court for  
17 Orange County in connection with their failure to comply with the various  
18 provisions of the RHNA Laws.

19 Plaintiffs’ claims challenging the RHNA Laws are legally deficient, including  
20 on the basis that the Court lacks subject matter jurisdiction to hear this case. As  
21 explained in SCAG’s pending Motion to Dismiss, it is well-established that  
22 Plaintiffs lack standing to challenge state statutes – such as the RHNA Laws at issue  
23 here – because political subdivisions of a state are categorically precluded from  
24 challenging state laws on federal constitutional grounds. And, even if Plaintiffs had  
25 standing to bring federal constitutional claims – and to be clear, they do not –  
26 Plaintiffs’ state and federal claims lack merit, as they do not come close to meeting  
27 the requisite threshold to state a claim under Rule 12(b)(6).

28 ///

1 In sum, Plaintiffs lack standing to bring their claims in federal court, and  
 2 Plaintiffs nevertheless fail to state any colorable claims.

3 **B. Subject Matter Jurisdiction:**

4 **Plaintiffs' Position:**

5 28 U.S.C. 1331, as Plaintiffs allege Defendants have committed substantial  
 6 deprivation of rights under the U.S. Constitution and Defendants have deprived  
 7 Plaintiffs of First Amendment rights, Constitutional rights of Procedural and  
 8 Substantive Due Process, and Defendants have violated the Commerce Clause of the  
 9 U.S. Constitution. Accordingly, this Court has federal question jurisdiction under  
 10 28 U.S.C. Sections 1331 and 1343. This Court has authority to award the requested  
 11 Declaratory Relief under 28 U.S.C. § 2201; and the requested Injunctive Relief and  
 12 damages under 28 U.S.C. § 1343(a).

13 **State Defendants' Position:**

14 State Defendants contend that this Court lacks subject matter jurisdiction over  
 15 this dispute because Plaintiffs, in their official capacity, have no federally protected  
 16 constitutional rights that they may enforce against the State Defendants in federal  
 17 court. Furthermore, the Eleventh Amendment bars this Court from considering  
 18 Plaintiffs' state law claims.

19 **SCAG's Position:**

20 As thoroughly explained in SCAG's pending Motion to Dismiss, the Court  
 21 does not possess federal subject matter jurisdiction to hear this case, as Plaintiffs  
 22 lack standing to bring their federal challenges to the RHNA Laws. *City of South*  
 23 *Lake Tahoe v. California Tahoe Reg'l Plan. Agency*, 625 F.2d 231, 233 (9th Cir.  
 24 1980). This is because charter cities, as political subdivisions of the state, cannot  
 25 assert violations of federal constitutional rights against the state, including another  
 26 political subdivision such as SCAG. *Burbank-Glendale-Pasadena Airport Auth. v.*  
 27 *City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998). Standing is a jurisdictional  
 28 requirement that cannot be waived. *B.C. v. Plumas Unified Sch. Dist.*, 192 F.3d

1 1260, 1264 (9th Cir. 1999).

2 **C. Legal Issues:**

3 **Plaintiffs' Position:**

4 This case is about whether certain RHNA Laws, along with CEQA, and in  
 5 addition to actions of the individual Defendants, Governor Newsom and HCD  
 6 Director Gustavo Velasquez violate the U.S. Constitution, including the First  
 7 and Fourteenth Amendments, Separation of Powers, Bill of Attainder, and the  
 8 Commerce Clause. This case also concerns certain RHNA Laws, along with  
 9 CEQA, and in addition to actions of the Defendants, violate the California  
 10 Constitution under Article XI, pursuant to the City's Charter City and Municipal  
 11 Corporation status, and Article IV, for Special Statute. This case challenges  
 12 certain RHNA Laws, in addition to actions of the Defendants, as having violated  
 13 the State's CEQA laws. Finally, it challenges actions by certain State actors, like  
 14 Governor Newsom and the Director of HCD, as having committed fraud by  
 15 making false statements/narratives/basis for their housing agenda. This as a  
 16 result causes SCAG and cities like the City of Huntington Beach to take certain  
 17 actions based on those false statements to implement high-density housing plans  
 18 in certain areas of the State.

19 **State Defendants' Position:**

20 State Defendants contend that Plaintiffs lack standing to assert federal  
 21 constitutional challenges against the State Defendants, and that this Court lacks  
 22 jurisdiction to consider Plaintiffs' state law claims against the State Defendants.  
 23 Likewise, for the reasons explained in SCAG's below statement, the issues  
 24 involve questions of law that can be resolved on the pleadings.

25 **SCAG's Position:**

26 As explained above, this Court lacks subject matter jurisdiction.

27 But, even if the Court had jurisdiction, the issues in this case boil down to  
 28 questions of law that the Court can resolve on the pleadings. This is because



1 Plaintiffs challenge the RHNA Laws and thereby seek a declaration  
 2 invalidating, and an order enjoining, at least sixteen separate sections of the  
 3 Government Code, some of which are at least forty years old. This challenge is  
 4 premised on deficient constitutional and state law claims, including asserted  
 5 violations of: (i) the federal constitution, including the First Amendment,  
 6 Fourteenth Amendment, and the Commerce Clause, (ii) the California  
 7 Constitution, including Articles I, IV, and XI, and (iii) state law, including  
 8 CEQA and the RHNA Laws. Also, and separately, Plaintiffs include a fraud  
 9 claim against SCAG and the State Defendants.

10 None of Plaintiffs' allegations rise to the level of a cognizable claim and the  
 11 Court should dismiss Plaintiffs' First Amended Complaint without leave to  
 12 amend.

13 **D. Damages:**

14 **Plaintiffs' Position:**

15 Injunctive and declaratory relief, attorney fees, costs, and any other relief  
 16 whether monetary or declaratory/injunctive in nature that is deemed appropriate.

17 **State Defendants' Position:**

18 Plaintiffs are not entitled to any relief and have no claim for damages against  
 19 the State Defendants by virtue of the Eleventh Amendment and other immunity  
 20 doctrines.

21 **SCAG's Position:**

22 SCAG denies Plaintiffs' entitlement to any relief, including damages, under  
 23 any of their asserted claims.

24 **E. Parties and Evidence:**

25 **Parties:**

26 Plaintiffs, the City of Huntington Beach, the City Council, the Mayor Tony  
 27 Strickland, the Mayor Pro Tem Gracey Van Der Mark, and

28 ///



1 Defendants Governor Gavin Newsom, Director of HCD Gustavo Velasquez,  
2 the Southern California Association of Governments (SCAG), and the State's  
3 Department of Housing & Community Development.

4 **Plaintiffs' Percipient Witnesses:**

- 5 1. Mayor of Huntington Beach, Tony Strickland
- 6 2. Mayor Pro Tem of Huntington Beach, Gracey Van Der Mark
- 7 3. Other Huntington Beach City Council Members
- 8 4. Members of the Planning Commission
- 9 5. Huntington Beach City Planner, Jennifer Villasenor
- 10 6. Huntington Beach City staff
- 11 7. Michael S. Tilden, the Acting, or then Acting, California State Auditor  
12 regarding the Auditor's March 17, 2022 Report on Regional Housing Needs  
13 Assessments as alleged in the Complaint.
- 14 8. Person Most Knowledgeable from the California State Auditor's Office  
15 regarding the Auditor's March 17, 2022 Report on Regional Housing Needs  
16 Assessments as alleged in the Complaint.
- 17 9. California Governor, Gavin Newsom.
- 18 10. Person Most Knowledgeable from the California Governor's Office regarding  
19 any statements made by the Governor or the Governor's Office involving or  
20 relating to the "housing crisis" or the "need for housing" or any such statement  
21 to any similar effect as alleged in the Complaint.
- 22 11. Director of the State of California Department of Housing & Community  
23 Development, Gustavo Velasquez.
- 24 12. Person Most Knowledgeable from the State of California Department of  
25 Housing & Community Development regarding any statements made by HCD  
26 involving or relating to the "housing crisis" or the "need for housing" or any  
27 such statement to any similar effect as alleged in the Complaint.
- 28 13. Person Most Knowledgeable from the State of California Department of

- 1 Housing & Community Development regarding the 13,368 units of RHNA
- 2 assigned to the City of Huntington Beach as alleged in the Complaint.
- 3 14. Person Most Knowledgeable from the Southern California Association of
- 4 Governments regarding the 13,368 units of RHNA assigned to the City of
- 5 Huntington Beach as alleged in the Complaint.
- 6 15. State Legislators, to be identified, with knowledge of SB 1333 and RHNA
- 7 Laws as alleged in the Complaint.
- 8 16. The Consultants who prepared the City's 2022/2023 Environmental Impact
- 9 Report for the proposed Housing Element update presented to Council on April
- 10 4, 2023.
- 11 17. Consultants who Prepared the City's proposed Housing Element Update
- 12 18. Other witnesses who will be identified during discovery in this case.

13 **State Defendants' Percipient Witnesses:**

14 1 Plaintiffs' claims fail as a matter of law. In addition, Plaintiffs' claims are

15 fundamentally legal objections to California's housing laws. Plaintiffs' fraud claim,

16 moreover, boils down to a difference of opinion on whether California has a

17 shortage of housing. State Defendants do not plan to call any percipient witnesses in

18 this action.

19 **SCAG's Percipient Witnesses:**

- 20 1. Plaintiffs' claims fail as a matter of law. However, in the event the Court rules
- 21 otherwise, the following are SCAG's key percipient witnesses:
- 22 2. SCAG personnel who worked on the RHNA allocation numbers for the "6<sup>th</sup>
- 23 RHNA Cycle," spanning from 2021 through 2029.

24 **Plaintiffs' Key Documents:**

- 25 1. The City of Huntington Beach's Environmental Impact Report for the Housing
- 26 Element Amendment along with Statement of Overriding Considerations
- 27 presented to the City Council at times in 2022 and presented again on April 4,
- 28 2023.

- 1 2. The California State Auditor's March 17, 2022, Report on Regional Housing  
2 Needs Assessments.
- 3 3. The voluminous documents produced by the California State Auditor in  
4 response to the City's California Public Records Request (CPRA) calling for  
5 records to be produced related to, or a basis of, the California State Auditor's  
6 March 17, 2022 Report on Regional Housing Needs Assessments.
- 7 4. Multiple Articles reporting statements by Governor Gavin Newsom regarding  
8 the "housing crisis" or the "need for housing" or any such statement to any  
9 similar effect as alleged in the Complaint.
- 10 5. Multiple Articles reporting statements by HCD regarding the "housing crisis"  
11 or the "need for housing" or any such statement to any similar effect as alleged  
12 in the Complaint.
- 13 6. Multiple Articles reporting on the California State Auditor's March 17, 2022  
14 Report on Regional Housing Needs Assessments as alleged in the Complaint.
- 15 7. Transit maps, population maps, geographical maps, water systems maps,  
16 environment maps, and other maps depicting the City of Huntington Beach and  
17 its features.
- 18 8. Various photographs and video depicting the City of Huntington Beach and its  
19 features.
- 20 9. Various video clips of Press Conferences or other on-camera announcements  
21 by the Governor or other State officials related to the City of Huntington Beach  
22 or the "housing crisis" or the "need for housing" or any such statement to any  
23 similar effect as alleged in the Complaint.
- 24 10. Charts/Data reflecting the City's population, development over time, and  
25 housing supply.
- 26 11. Transit maps, population maps, geographical maps, water systems maps,  
27 environment maps, and other maps depicting the other cities and their features.
- 28 12. Various photographs and video depicting the other cities both developed and

1 undeveloped, and their features.

2 13. Charts/Data reflecting the other cities' populations, development over time, and  
3 housing supply.

4 14. Text of State Legislative and Committee notes for SB 1333, the Housing Laws,  
5 and the RHNA Laws as contemplated in and/or alleged in the Complaint.

6 15. The Charter of the City of Huntington Beach.

7 16. Municipal and Zoning Code

8 17. California's Census data.

9 18. Housing Development data.

10 19. Letter communications between the City of Huntington Beach and HCD in  
11 recent years.

12 20. Letter communications between the City of Huntington Beach and SCAG in  
13 recent years.

14 21. Housing Element Update and all related documents, reports, and public hearing  
15 information.

16 22. The 2022/2023 Environmental Impact Report, public reports, documents and  
17 public hearing information

18 23. Other various documents that Plaintiffs anticipate will be discovered and  
19 identified through the discovery process.

20 **State Defendants' Key Documents:**

21 1. Plaintiffs' claims fail as a matter of law. In any event, if the Court does not  
22 dismiss Plaintiffs' lawsuit, the State Defendants may use documents related to  
23 the City's housing element update, including any and all communications  
24 between the City and HCD.

25 **SCAG's Key Documents:**

26 1. Plaintiffs' claims fail as a matter of law. However, in the event the Court rules  
27 otherwise, the following are SCAG's key documents:

28 2. Documents relating to SCAG's determination and setting of the RHNA

housing unit allocations for the 6<sup>th</sup> RHNA planning cycle, including staff reports, formal adopted unit allocations, any appeals and related staff reports, as well as calculations, spreadsheets, tables, plans, methodologies, data sheets, and policies and procedures.

**F. Insurance:**

Plaintiff City of Huntington Beach is self-insured up to \$1,000,000 and in excess of that amount is secured by excess insurance/reinsurance for itself.

State Defendants: State Defendants are self-insured.

SCAG: Plaintiffs' action does not seek damages. In any event, SCAG is insured as follows: SCAG obtains its insurance through the California Joint Powers Insurance Authority in an amount up to \$30 Million, and is also insured in excess of that limit by way of excess coverage by California Joint Powers Insurance Authority up to \$50 Million.

**G. Manual for Complex Litigation:**

The parties agree that this is not a complex case and therefore does not necessitate utilizing procedures from the Manual for Complex Litigation.

**H. Motions:**

For Plaintiffs: Only such Evidentiary or Issues Motions as may be necessary throughout the course of the litigation and prior to trial in this matter.

For State Defendants: Given the dispositive legal bases justifying dismissal, State Defendants will pursue the earliest feasible dismissal of Plaintiffs' lawsuit, as well as the earliest feasible dismissal or denial of any and all claims in Plaintiffs' lawsuits, and will file any such motion to that effect as necessary. State Defendants may also file discovery motions as necessary.

For SCAG: SCAG does not contemplate filing any other motions at this time, except potentially another motion to dismiss should Plaintiffs be granted leave to amend following hearing on SCAG's pending Motion to Dismiss.

///

1       **I. Dispositive Motions:**

2       **Plaintiffs' Position:**

3           Defendants' respective Motions to Dismiss are scheduled for hearing on July  
4       27, 2023.

5       **State Defendants' Position:**

6           State Defendants have filed a Motion to Dismiss Plaintiffs' First Amended  
7       Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1), (6). Granting this  
8       motion will result in dismissal of the entirety of Plaintiffs' action.

9       **SCAG's Position:**

10          SCAG has filed a Motion to Dismiss Plaintiffs' First Amended Complaint  
11       set to be heard on July 27, 2023. SCAG's Motion wholly disposes of the FAC  
12       against it on the following grounds:

- 13           • The entire action must be dismissed because Plaintiffs lack standing to  
14           challenge the RHNA Laws on constitutional grounds.
- 15           • Each of Plaintiffs' federal constitutional claims are also meritless:
  - 16               ○ Plaintiffs' First Amendment claim fails because no speech has been  
17               burdened as a matter of law.
  - 18               ○ Plaintiffs' procedural due process claim fails because Plaintiffs cannot  
19               allege a property interest and the RHNA Laws provide sufficient  
20               process as a matter of law.
  - 21               ○ Plaintiffs' substantive due process claim fails because Plaintiffs cannot  
22               allege a protected interest, and the RHNA Laws have a rational basis to  
23               accomplish a legitimate governmental objective as a matter of law.
  - 24               ○ Plaintiffs' commerce clause claim fails because the RHNA Laws do not  
25               discriminate against out-of-state commerce, nor excessively burden  
26               interstate commerce as a matter of law.
- 27           • Each of Plaintiffs' state law claims are also meritless:
  - 28               ○ Plaintiffs' "home rule" claim fails because the RHNA Laws constitute

1 a matter of statewide concern as a matter of law.

- 2 ○ Plaintiffs' RHNA allocation claim fails because judicial review of the
- 3 RHNA allocations are precluded.
- 4 ○ Plaintiffs' separation of power claim fails because the RHNA Laws do
- 5 not violate the state constitution's separation of powers clause as a
- 6 matter of law.
- 7 ○ Plaintiffs' "bill of attainder" claim fails because the RHNA Laws do
- 8 not constitute a legislative punishment.
- 9 ○ Plaintiffs' CEQA claim fails because complying with CEQA is not a
- 10 CEQA violation.
- 11 ○ Plaintiffs' "special statute" claim fails because the challenged
- 12 provisions of the RHNA Laws have a rational basis to the housing
- 13 needs of the regions they relate to.
- 14 ○ Plaintiffs' fraud claim fails because Plaintiffs fail to plead fraud with
- 15 specificity and nevertheless SCAG has statutory immunity.

16 **J. Status of Discovery:**

17 Discovery has not yet commenced in this matter as the hearings on the  
 18 dispositive motions filed have not yet been fully briefed or decided. However, the  
 19 Parties have agreed to exchange their respective Initial Rule 26 Disclosures on June  
 20 13, 2023, which is within 14 days of the Conference held among the Parties on May  
 21 30, 2023.

22 **K. Discovery Plan:**

23 The parties address the subjects contained in Rule 26(f) as follows:

- 24 1) Changes to Initial Disclosure Requirements. As discussed above, the
- 25 parties agree that initial disclosures shall be made on June 13, 2023.
- 26 2) Subjects of Discovery.
- 27 Plaintiffs: Plaintiffs anticipate depositions of the parties and witnesses
- 28 concerning the facts of this case.



1 State Defendants: State Defendants do not anticipate needing to serve  
 2 any discovery because this Court lacks subject matter jurisdiction to  
 3 hear this action. If Plaintiffs claims survive, the State Defendants will  
 4 pursue discovery on the surviving causes of action.

5 SCAG: SCAG does not anticipate needing to serve any discovery on  
 6 the basis that it believes it will prevail on its Motion to Dismiss,  
 7 including on the grounds that the Court lacks subject matter jurisdiction  
 8 to hear this action. However, in the event any of Plaintiffs' claims  
 9 survive SCAG's Motion to Dismiss, SCAG will serve written  
 10 discovery with respect to Plaintiffs' surviving causes of action.

11 3) Changes to the Limitations of Discovery.

12 Plaintiffs: Plaintiffs do not anticipate the need to change the limitations  
 13 of discovery as prescribed by FRCP or this Court's Local Rules.

14 State Defendants: State Defendants join SCAG's below request for a  
 15 stay.

16 SCAG: SCAG requests that any further discovery beyond the initial  
 17 disclosures be stayed until 10 days after the Court's ruling on the  
 18 pending Motion to Dismiss, on the grounds that the Court lacks subject  
 19 matter to hear this action.

20 4) Any Other Court Orders:

21 Plaintiffs: Plaintiffs do not propose that the Court issue any other  
 22 orders under Federal Rules of Civil Procedure 16(b), 16(c), or 26(c).

23 State Defendants: State Defendants join SCAG's below request for a  
 24 stay.

25 SCAG: As discussed above, SCAG requests that the Court issues a  
 26 Rule 16(b) scheduling order that stays discovery until 10 days after the  
 27 Court's ruling on the pending Motion to Dismiss.

28 ///

1 Plaintiffs anticipate serving written interrogatories, requests for admission,  
 2 and requests for production of documents on the issues of constitutional violation  
 3 issues, methodology and purpose behind State Housing Laws and allocation, and  
 4 violation of CEQA to comply with State Housing Laws, particularly RHNA Laws.

5 The parties do not see any issues regarding electronically stored information  
 6 pursuant to Rule 26(f)(3)(C) in this case.

7 **L. Discovery Cut-Off:**

8 Plaintiffs propose a fact discovery-cut off of February 22, 2024.

9 Defendants propose a fact discovery-cut off of February 22, 2024.

10 **M. Expert Discovery:**

11 Plaintiffs propose an initial expert witness disclosure exchange date of March  
 12 7, 2024, a rebuttal expert witness disclosure date of March 21, 2024, and an expert  
 13 discovery cut-off of April 4, 2024.

14 State Defendants and SCAG jointly propose an initial expert witness  
 15 disclosure exchange date of March 7, 2024, a rebuttal expert witness disclosure date  
 16 of March 21, 2024, and an expert discovery cut-off of April 4, 2024.

17 **N. Settlement Conference and Alternative Dispute Resolution (“ADR”):**

18 Plaintiffs: The parties have not discussed settlement and Plaintiffs wish to  
 19 conduct further discovery before addressing the possibility of settlement. Plaintiffs  
 20 elect to proceed with ADR Procedure No. # 2 – District Court Panel Mediator.

21 State Defendants: State Defendants do not believe this case is amenable to  
 22 settlement.

23 SCAG: SCAG does not believe this case is amenable to settlement.

24 **O. Preliminary Trial Estimate:**

25 All parties have requested a jury trial. Plaintiffs estimate that trial will take  
 26 approximately 10 court days and expects to call approximately 20 witnesses at trial.

27 The State Defendants estimate that should trial be necessary, it should take 1  
 28 to 3 days, and they expect to call 1 expert witness at trial on the narrow issue of the

existence of a crisis-level housing shortage.

SCAG estimates that should trial be necessary, it will take approximately 3 to 5 court days and expects to call approximately 5 witnesses at trial.

**P. Trial Counsel:**

Plaintiffs: Michael E. Gates (lead), Nadin S. Said.

State Defendants: Deputy Attorneys General Matthew T. Struhar (lead) and Thomas Kinzinger

SCAG: Deborah J Fox (lead), David Mehretu, and Kristof D. Szoke.

**Q. Magistrate Judge:**

At this time, the parties do not agree to consent to have the Magistrate Judge preside over the proceedings of this matter, including trial.

**R. Independent Expert or Master:**

The parties agree that this is not a case in which a master pursuant to Federal Rule of Civil Procedure 53 or an independent scientific expert should be appointed.

Dated: June 8, 2023

Respectfully submitted,  
MICHAEL E. GATES, CITY ATTORNEY

By: /s/ Michael E. Gates  
MICHAEL E. GATES, CITY ATTORNEY  
Attorney for Plaintiffs,  
CITY OF HUNTINGTON BEACH, and  
HUNTINGTON BEACH CITY COUNCIL, and  
MAYOR TONY STRICKLAND, and  
MAYOR PRO TEM GRACEY VAN DER  
MARK

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1 Dated: June 8, 2023

ROB BONTA, ATTORNEY GENERAL OF  
CALIFORNIA

3 By: /s/ Thomas P. Kinzinger

4 Thomas P. Kinzinger, Deputy Attorney General  
5 Attorney for Defendants, GAVIN NEWSOM, IN  
6 HIS OFFICIAL CAPACITY AS GOVERNOR  
7 OF THE STATE OF CALIFORNIA, AND  
8 INDIVIDUALLY; GUSTAVO VELASQUEZ,  
9 IN HIS OFFICIAL CAPACITY AS DIRECTOR  
10 OF THE STATE OF CALIFORNIA  
11 DEPARTMENT OF HOUSING AND  
12 COMMUNITY DEVELOPMENT, AND  
13 INDIVIDUALLY; AND THE CALIFORNIA  
14 DEPARTMENT OF HOUSING AND  
15 COMMUNITY DEVELOPMENT

13 Dated: June 8, 2023

MEYERS NAVE

15 By: /s/ Deborah J. Fox

16 DEBORAH J. FOX  
17 DAVID MEHRETU  
18 KRISTOF D. SZOKE  
19 Attorneys for Defendant  
20 SOUTHERN CALIFORNIA ASSOCIATION  
21 OF GOVERNMENTS  
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